

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable René Lastreto II

Hearing Date: Thursday, June 15, 2017

Place: Department B – Courtroom #13

Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare an order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 A.M.

1. 16-10521-B-7 ALAN ENGLE MOTION FOR ORDER ESTIMATING HIS
DRJ-1 CLAIM FOR DISTRIBUTION PURPOSES
ROCKY PIPKIN/MV ONLY
5-18-17 [154]

PETER BUNTING/Atty. for dbt.
DAVID JENKINS/Atty. for mv.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

2. [16-10521](#)-B-7 ALAN ENGLE CONTINUED OBJECTION TO CLAIM OF
PBB-1 ROCKY J. PIPKIN, CLAIM NUMBER 3
ALAN ENGLE/MV 2-15-17 [[118](#)]
PETER BUNTING/Atty. for dbt.
RESPONSIVE PLEADING

This matter will proceed as scheduled.

3. 16-10521-B-7 ALAN ENGLE MOTION BY PETER B. BUNTING TO
PBB-2 WITHDRAW AS ATTORNEY
5-31-17 [163]
PETER BUNTING/Atty. for dbt.

This matter will proceed as scheduled.

4. [15-13932](#)-B-7 VICTOR PASNICK MOTION TO SELL
RHT-13 5-17-17 [[244](#)]
ROBERT HAWKINS/MV
PETER FEAR/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

This matter will proceed as scheduled.

Unless opposition is presented at the hearing, and subject to higher and better bids, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

5. [15-13932](#)-B-7 VICTOR PASNICK
RHT-14
ROBERT HAWKINS/MV
PETER FEAR/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

MOTION TO SELL
5-17-17 [[249](#)]

This matter will proceed as scheduled.

Unless opposition is presented at the hearing, and subject to higher and better bids, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

6. [17-11034](#)-B-7 CAITLIN LOKEY
JES-1

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
4-21-17 [[12](#)]

The motion is conditionally denied. No appearance is necessary at this hearing. The court will issue an order.

The debtor shall attend the meeting of creditors rescheduled for June 16, 2017, at 12:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or to move for dismissal of the case under section 707(b) is extended to 60 days after the conclusion of the meeting of creditors.

7. [17-11435](#)-B-7 ANDREW/AMY LOFTIN
DRJ-1
ANDREW LOFTIN/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
5-31-17 [[16](#)]

This matter will proceed as scheduled.

Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

8. [17-10938](#)-B-7 MARIA SEGURA
UST-1
TRACY DAVIS/MV

MOTION FOR DENIAL OF DISCHARGE
OF DEBTOR UNDER 11 U.S.C.
SECTION 727(A)
5-17-17 [[20](#)]

ROBIN TUBESING/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order in conformance with the ruling. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the respondent's default will be entered.

The record shows that the debtor received a chapter 7 discharge on December 21, 2009, in a prior case. Accordingly, she is not eligible to receive a discharge in the current case or in any case filed before at least December 21, 2017. §727(a)(8).

9. [12-14439](#)-B-7 RAFAEL/ARACELI NEGRETE
TOG-3
RAFAEL NEGRETE/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO AVOID LIEN OF KINGS
CREDIT SERVICES
6-1-17 [[40](#)]

This matter will proceed as scheduled.

Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

It appears from the evidence submitted and the record that the debtors are entitled to avoid this lien that impairs an exemption to which they would otherwise have been entitled.

10. [12-15547](#)-B-7 DONNA/EVERETT DAVIS
JES-7
JAMES SALVEN/MV
GARY HUSS/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JAMES E. SALVEN, ACCOUNTANT(S)
5-15-17 [[280](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order in conformance with the ruling. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the respondent's default will be entered.

11. [17-11459](#)-B-7 TRINIDAD MORENO AND
MAT-1 ALICIA MORENO
TRINIDAD MORENO/MV
MARCUS TORIGIAN/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK
5-15-17 [[12](#)]

This motion will be continued to June 28, 2017, at 9:30 a.m., for the filing of corrected exhibits to be filed and served on or before June 21, 2017. The court will enter an order. No appearance is necessary.

The exhibits as filed do not comply with the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section II.D. and Section IV.B and C.

12. [14-11265](#)-B-7 BETTY BUMGARNER
AED-3
BETTY BUMGARNER/MV
ASHTON DUNN/Atty. for dbt.

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
5-17-17 [[60](#)]

This motion will be continued to June 28, 2017, at 9:30 a.m., for the filing of corrected exhibits to be filed and served on or before June 21, 2017. The court will enter an order. No appearance is necessary.

The exhibits as filed do not comply with the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section IV.B and C.

13. [14-11265](#)-B-7 BETTY BUMGARNER
AED-3
BETTY BUMGARNER/MV

ASHTON DUNN/Atty. for dbt.

MOTION TO AVOID LIEN OF
PROFESSIONAL COLLECTION
CONSULTANTS
5-14-17 [[54](#)]

This motion will be continued to June 28, 2017, at 9:30 a.m., for the filing of corrected exhibits to be filed and served on or before June 21, 2017. The court will enter an order. No appearance is necessary.

The exhibits as filed do not comply with the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section IV.B and C.

14. [10-60572](#)-B-7 BOYCE/LINDA WISDOM
RHT-1
ROBERT HAWKINS/MV
ROBERT HAWKINS/Atty. for mv.

MOTION TO EMPLOY VANCE ANDRUS
AS SPECIAL COUNSEL
5-16-17 [[33](#)]

This matter will proceed as scheduled for resolution of the following issues:

1. Proposed special counsel states, in his declaration at page 1, ¶ 4: "I am a Chapter 7 panel trustee for the Eastern District of California, Fresno Division."
2. Is proposed special counsel admitted to practice in the E.D. of California?
3. Neither the motion nor proposed special counsel's declaration state his firm's relationship with the debtors except to say the trustee selected the firm because it "is familiar with the facts of all pre-petition claims held" and, "by reason of their particular expertise in prosecuting civil tort claims." Motion at page 2.
4. Proposed counsel's declaration states that neither he nor any member of his staff "are not a creditor" of the debtor. This seems to be in contrast with the request that the employment be approved "nunc pro tunc." This seems to indicate that proposed counsel has already been engaged by the debtors.
5. There is no copy of any fee agreement, either between the debtors and proposed special counsel, or between proposed special counsel and the trustee, filed with the motion to illuminate the court.
6. Nunc pro tunc approval is sought, however, the record shows that this case was closed on January 7, 2011, and reopened on motion of the U.S. Trustee after which a chapter 7 trustee was appointed on September 1, 2016. The docket indicates that the §341 meeting of creditors was held and

concluded on October 21, 2010, however the date of this entry is November 8, 2016, and a notice to file proofs of claim was issued. It is now seven months later. This motion contains no evidence or authority to support *nunc pro tunc* approval.

"*Nunc pro tunc* signifies now for then, or in other words, a thing is done now, which shall have [the] same legal force and effect as if done at [the] time when it ought to have been done." *United States v. Allen*, 153 F.3d 1037, 1044 (9th Cir.1998). This "inherent power of the court to make its records speak the truth," *id.*, "is a limited one, and may be used only where necessary to correct a clear mistake and prevent injustice." *United States v. Sumner*, 226 F.3d 1005, 1009-10 (9th Cir.2000). The power does not, however, allow the court "to alter the substance of that which actually transpired or to backdate events to serve some other purpose. Rather, its use is limited to making the record reflect what the ... court actually intended to do at an earlier date, but which it did not sufficiently express or did not accomplish due to some error or inadvertence." *Id.* at 1010 (citations omitted).

Wirum v. Warren (In re Warren), 568 F.3d 1113, 1116 n.1 (9th Cir. 2009).

7. There is nothing that informs the court of the stage of this litigation. Has a settlement already been made? Will the trustee be bringing a motion to compromise a claim?
8. Finally, the record shows these debtors filed this case *pro se*, without assistance of an attorney, and their exemptions under Cal.Civ.Proc. Code §703 are minimal. After the debtors amend their schedule C to exempt some portion of this recovery for personal injury, will there be an excess that justifies the trustee's administration of this asset rather than abandonment it?

15. [17-11592](#)-B-7 MICHELLE VELASQUEZ
ASW-1
AEGIS ASSET BACKED SECURITIES,
LLC/MV
CAREN CASTLE/Atty. for mv.
DISMISSED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-5-17 [[18](#)]

This case has already been dismissed. No appearance is necessary.

16. [14-14593](#)-B-7 WAYNE HEAD
TGM-12
PETER FEAR/MV
DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
5-25-17 [[165](#)]

This matter will proceed as scheduled.

Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

17. [17-11293](#)-B-7 MAYRA HERNANDEZ
APN-1
SANTANDER CONSUMER USA INC./MV
THOMAS GILLIS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-10-17 [[11](#)]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is scheduled to be surrendered, is uninsured, and is a depreciating asset.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

18. [16-13697](#)-B-7 SCOTT/KELLY ALLRED
KDG-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIB &
KIMBALL, LLP FOR LISA HOLDER,
TRUSTEES ATTORNEY(S)
5-18-17 [[62](#)]

PETER BUNTING/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order in conformance with the ruling. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here. Accordingly, the respondents' defaults will be entered.

11:00 A.M.

1. [17-11035](#)-B-7 GRISELDA PADRON

REAFFIRMATION AGREEMENT WITH
LES SCHWAB TIRE CENTERS OF
CENTAL CA, INC.
5-3-17 [[17](#)]

MARK ZIMMERMAN/Atty. for dbt.

The reaffirmation agreement is incomplete and does not meet the requirements of 11 U.S.C. § 524. It was not signed by the creditor. In addition, the court is required to review the agreement for the presumption of hardship, however the agreement does not contain the debtor's financial information.

The agreement is not enforceable against the debtors and cannot be approved. *In re Lopez*, 274 B.R. 854, 861-62 (9th Cir. BAP 2002), *aff'd*, 345 F.3d 701 (9th Cir. CA 2003).

2. [17-11567](#)-B-7 YVONNE DEPAGE

REAFFIRMATION AGREEMENT WITH
FORD MOTOR CREDIT COMPANY
5-15-17 [[12](#)]

This matter will proceed as scheduled.

3. [17-10491](#)-B-7 MARIA NUNEZ

PRO SE REAFFIRMATION AGREEMENT
WITH AMERICREDIT FINANCIAL
SERVICES, INC.
5-18-17 [[28](#)]

This matter will proceed as scheduled.